

Gunasekaran Vs. Veerabadhran

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Court : Chennai

Decided On : Mar-11-1994

Reported in : [1995]84CompCas679(Mad)

Judge : Pratap Singh, J.

Acts : Negotiable Instrument Act, 1881 - Sections 138

Appeal No. : Criminal Original Petition No. 2300 of 1992

Appellant : Gunasekaran

Respondent : Veerabadhran

Advocate for Def. : S. Palani Velayutham, Adv.

Advocate for Pet/Ap. : K. Sivakumar, Adv.

Judgement :

Pratap Singh, J.

1. The accused in C.C No. 161 of 1990 on the file of the Judicial Magistrate, Valliyur, has filed this petition under section 482 of the Code of Criminal Procedure, 1973, to call for the records in the said case and to quash the same.

2. The short facts are : The respondent has filed a complaint against the accused for the offence under section 138 of the Negotiable Instruments Act, 1881. The

allegations in the complaint are briefly as follows :

The accused is a friend of the complainant. On February 19, 1990, the complainant lent a sum of Rs. 20,000 to the accused. The accused agreed to repay the said amount within one month from the said date and issued a cheque in favour of the complainant. The accused failed to repay the loan within the agreed time. So, the complainant presented the cheque to Canara Bank for encashment. But the cheque was dishonoured for lack of funds and the complainant received a notice of dishonour on April 10, 1990. The complainant sent a notice within 15 days of the receipt of notice of dishonour, to the accused, calling upon him to make the payment of the said amount. The accused deliberately evaded to receive the notice and the same was returned. The evasion of the accused to receive the notice is wilful and wanton. Therefore, the returned notice is as good as a served one and it amounts to constructive notice. The accused has failed to make the payment within 15 days of the knowledge of the notice. Hence, the complaint.

3. Mr. M. Sukumaran, learned counsel appearing for the petitioner, would submit :

(1) The date of sending of notice is not stated in the complaint and the notice should be sent within 15 days of the receipt of notice of dishonour as per the proviso to section 138 of the Negotiable Instruments Act, 1881;

(2) Notice was not at all served on the accused; and

(3) The complainant was examined in chief and he has not stated therein as to when exactly he sent the notice. He has not stated that the notice was returned for the reason mentioned in paragraph 6 of the complaint and he has also not produced the returned cover;

and in view of the above reasons, the complaint is liable to be quashed.

4. I shall consider the submissions of learned counsel seriatim. Regarding the first submission, in paragraph 6 of the complaint, it is stated as follows :

'The complainant sent a notice within 15 days of the receipt of notice of dishonour to the accused calling upon him to make the payment of the said amount. The

accused deliberately evaded to receive the notice and it was returned.'

5. Thus, there are necessary allegations to meet the requirement of the proviso to section 138 of the Negotiable Instruments Act, 1881. Simply because the date of sending of the statutory notice is not mentioned in the complaint, it cannot be stated that it is infirm. It cannot be quashed on that ground.

6. Though PW-1, when he was examined in chief, has not stated the exact date on which he sent the notice, he has positively stated that he sent the notice within 15 days. The evidence is yet to be completed. While so, it cannot be presumed that though he has stated that he sent the notice within 15 days of the notice of dishonour, it could not be so. Hence, this submission cannot be accepted.

7. With regard to the non-service of notice, there is an allegation in the complaint that the accused deliberately evaded to receive the notice and it was returned and that the evasion of the accused to receive the notice is wilful and wanton. Though the returned notice was not filed, there is time enough for the complainant to establish this aspect of the matter. During the course of trial, he can prove the allegations in the complaint. Hence, I am not able to accept this submission also.

8. None of the submissions made by learned counsel for the petitioner is acceptable. Hence, the petition shall stand dismissed. The trial court shall not in any way be influenced by any of the observations made in this order while disposing of the case.